

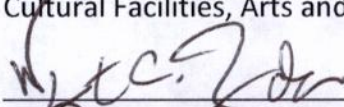


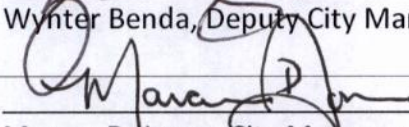
To the Honorable Council
City of Norfolk, Virginia

April 26, 2016

From: John Rhamstine, Director, Department of
Cultural Facilities, Arts and Entertainment

Subject: Lease Agreement with the
Virginia Opera Association, Inc.

Reviewed: 
Wynter Benda, Deputy City Manager

Approved: 
Marcus D. Jones, City Manager

Item Number: **PH-2**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Virginia Opera Association, Inc.

III. **Description:**

This agenda item is an ordinance approving the terms and conditions of a lease agreement ("agreement") between the City of Norfolk (the "city") and the Virginia Opera Association, Inc. ("Virginia Opera") for the continued use of Harrison Opera House located at 160 W. Virginia Beach Boulevard.

IV. **Analysis**

This agreement will allow the Virginia Opera to continue to mount operatic performances in Harrison Opera House as well as provide office space for the company and its administrators. The term of the agreement is for three (3) years with the option to renew for two (2) additional one-year periods.

V. **Financial Impact**

This agreement stipulates that Virginia Opera will pay an escalating rent to the city according to the following schedule as calculated from the base FY 2017 (July 1 thru June 30) rental amount of \$105,702, to be increased by three percent (3%) each year of this agreement.

Virginia Opera Association Rent Schedule

Term	Base Rent
07/01/2016 – 06/30/2017	\$105,702
07/01/2017 – 06/30/2018	\$108,873
07/01/2018 – 06/30/2019	\$112,139
07/01/2019 – 06/30/2020	\$115,503
07/01/2020 – 06/30/2021	\$118,968

VI. Environmental

N/A

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the city's agenda notification process.

VIII. Board/Commission Action

The Civic Facilities Commission approved of the terms for this new agreement.


IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of Cultural Facilities, Arts and Entertainment and the City Attorney's Office

Supporting documentation from the City Attorney's Office:

- Ordinance
- Lease Agreement

Form and Correctness Approved: 

By 
Office of the City Attorney

Contents Approved: 

By 
DEPT. Cultural Facilities, Arts & Entertainment

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING THE TERMS AND CONDITIONS OF A LEASE AGREEMENT BETWEEN THE CITY AND THE VIRGINIA OPERA ASSOCIATION, INC. FOR CERTAIN PREMISES BEING THE HARRISON OPERA HOUSE LOCATED AT 160 WEST VIRGINIA BEACH BOULEVARD, NORFOLK, VIRGINIA AND AUTHORIZING THE EXECUTION OF THE LEASE AGREEMENT.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the terms and conditions of a Lease Agreement between the City and the Virginia Opera Association, Inc., as Lessee, whereby the City leases to Virginia Opera Association, Inc., certain City-owned premises known as the Harrison Opera House at 160 West Virginia Beach Boulevard, Norfolk, for a period of three (3) years, with the option to renew for up to two (2) additional one-year periods, a copy of which is attached hereto, are hereby approved.

Section 2:- That the City Manager is authorized to execute the Lease Agreement on behalf of the City and to do all things necessary and proper to carry out the Lease Agreement.

Section 3:- That the City Manager is further authorized to correct, revise or amend the Lease Agreement, with the advice and counsel of the City Attorney, as he may deem necessary to carry out the intent of the Council.

Section 4:- That this ordinance shall be in effect from and after thirty days from the date of its adoption.

**Lease Agreement between
The City of Norfolk and
The Virginia Opera Association**

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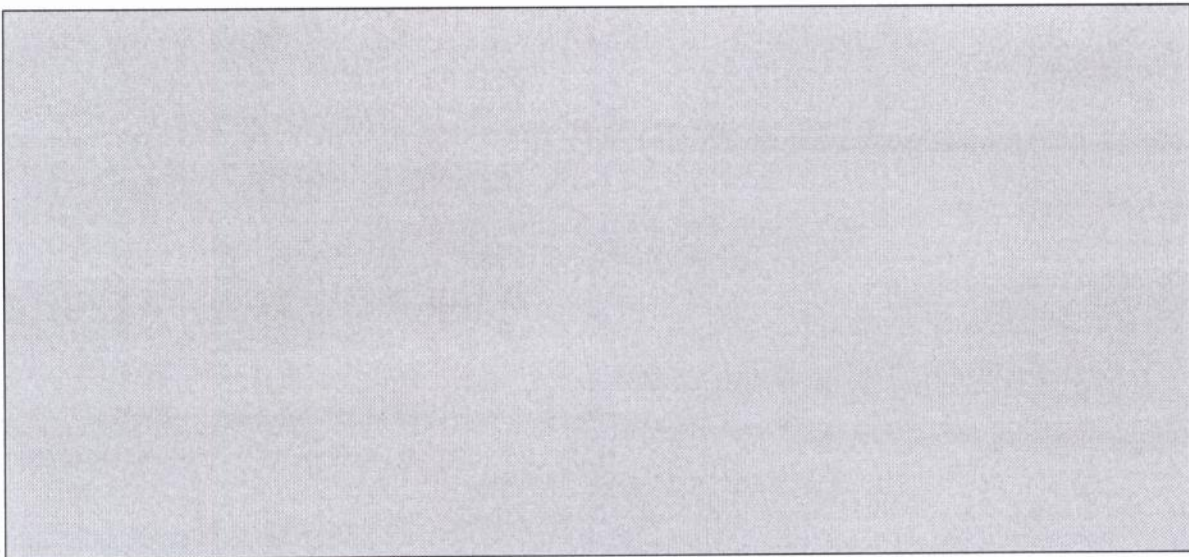
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This Lease Agreement, entered into this _____(date) day of _____ - _____(month), _____(year), by and between the CITY OF NORFOLK, hereinafter called the "City" and THE VIRGINIA OPERA ASSOCIATION, INC. (lessee), hereinafter called the "VO".

WHEREAS, the City desires the Lessee to provide the services set forth in the Scope of Services set forth below;

WHEREAS, the Lessee represents that it is willing and qualified to provide the services.

NOW THEREFORE, in consideration of the premises and the mutual covenants, promises, and representations contained herein, the parties hereto mutually agree as follows.

Article I – Introduction

1.1 Definitions

A. City: The City of Norfolk

B. City Performance: Any VO Performance that is performed in recognition of City contributions to the VO and allows an agreed upon number of tickets to be provided to the City, over and above normal ticket allotments, for the exclusive use of the City.

C. CFAE: The Department of Cultural Facilities, Arts and Entertainment which is responsible for the management of all City venues used by the VO.

D. City Generated Events (CGE): Events booked by the City in the HOH.

E. Director: The Director of the Department of Cultural Facilities, Arts and Entertainment or his designee.

F. HOH: HOH or premises.

G. Lessee: The Virginia Opera Association (VO) and its successors.

H. Operational Expenses: All expenses incurred by the VO for use of City facilities excluding rent.

I. Production: Multi-performance run of one particular event, e.g. "Aida".

- J. Non-Usage Days:** All days other than Usage Days.
- K. VO Season:** The performance season of the Virginia Opera Association, usually occurring from September through May.
- L. Usage Days:** All days used by the VO in HOH for uses including, but not limited to performances, rehearsals, pre-rigs, load-ins and load outs.
- M. VO:** The Virginia Opera Association or the Lessee.
- N. VO Events:** All operatic productions, fund-raising, receptions and special events by VO.
- O. Rehearsal Hall:** Non-performance space located behind the HOH stage.

Article II – Vision/Mission/Goals

- 2.1.** VO agrees to abide by the guidelines of the Department of Cultural Facilities, Arts and Entertainment while using HOH or other Departmental facilities.
- 2.2.** VO shall work with the City for the betterment of both parties and the enjoyment of the audiences.
- 2.3.** VO will work with the City to produce quality events that make business sense.
- 2.4.** VO agrees to utilize its resources to make every effort possible to ensure that the City's venue(s) are being utilized for Lessee performances. Lessee will work in conjunction with the City to preserve and maintain these performance spaces.
- 2.5.** VO and the City agrees to communicate openly and often about all potential issues and agrees to jointly work together to find appropriate solutions..
- 2.6.** VO agrees to maintain its status, as professional Opera company for the entire term of this agreement, including all extensions.

Article III – General Contract Provisions

3.1 Term

The term of this Agreement will be in effect for three (3) years from July 1st, 2016 through June 30th, 2019, unless terminated pursuant to section 7.9 of this Agreement. In addition to the original term, this Agreement may be renewed in writing by the parties for up to two (2) additional one year periods.

3.2 Premises

The premises specified in this Agreement is the HOH, located at 160 West Virginia Beach Boulevard, Norfolk, VA 23510 on the corner of Virginia Beach Boulevard and Llewellyn Avenue, Norfolk, Virginia. The VO may, from time to time, desire to use other City facilities for its performances. These uses will be negotiated under a separate Agreement.

3.3 Permitted Uses

Pursuant to this Agreement, VO shall conduct productions in the HOH and shall use the premises for operatic performances or other events as approved by the Director in writing prior to the use of the premises by VO for such other events. All such days shall be defined as "Usage Days", per section 1.1 L.

HOH is to be used for VO's own musically staged performances only. Non-operatic events that may be held in the HOH may only be booked and contracted by the Director or his designee.

3.4 Management of Premises

It is expressly understood and agreed by the parties that the Director shall be the City's agent for management of the premises pursuant to this Agreement.

3.5 Prohibited Uses

A. No Illegal or Immoral Purposes, Nuisance, Annoyance,

VO agrees that it will not allow the HOH to be used for any illegal or immoral purpose, and that it will not do, or suffer to be done, in or about the premises any act or thing which may be a nuisance, annoyance, inconvenience or cause damage to the City, the occupants of adjoining property or the neighborhood. The City agrees to make these same requirements applicable to other users of the premises.

B. Fire Hazard; Sanitation

VO agrees not to do and/or permit to be done any act which will increase the fire hazard or rate of fire insurance on the premises or any property thereon. For other users on the premises, the City agrees not to permit to be done and will require such other users not to do or permit to be done any act which will increase the fire hazard or rate of fire insurance on the premises or any property thereon. VO further agrees to obey all state and municipal laws and regulations relating to fire hazards, fire protection and sanitation.

3.6 Right of Entry

The City reserves the right of entry into the premises at any time, provided, however, that such entry does not interrupt or disturb any ticketed event taking place at the HOH unless it is for life safety reasons. VO shall provide the City agreed office space for CGE use. VO shall provide keys to the City for any locked/keyed areas of the premises for which VO has the keys.

3.7 Subletting

VO shall not, without the prior written agreement of the Director, use, or allow to be used, the premises for any purpose other than as stated herein, nor assign this Lease for the whole or any part of the term, nor sublet the whole or any part of the premises, nor allow the premises or any part thereof to be occupied by any other person or organization, other than VO.

VO may, with prior written approval of the Director, sublease the "Rehearsal Hall" to other users providing the space is used for rehearsals only. No public, ticketed or special events may be held in the Rehearsal Hall.

3.8 Preservation by Lessee

A. Condition of Premises

VO will maintain during the term of this Agreement and at the expiration of this Agreement deliver, the HOH in good order and condition, with the exception of reasonable wear and tear.

B. Alterations, Additions, or Improvements

VO shall not make any alterations, additions or improvements to the HOH without the Director's written consent. Any such approved alterations, additions or improvements made to the HOH by the VO during the term of this Agreement shall immediately become the property of the City. The VO's portable equipment purchased by VO shall not be included in such improvements.

Article IV – General Operational Contract Provisions

4.1 Booking

On or before March 1st of each year during the term of this Agreement, VO shall submit to the Director in writing a proposed Usage Day Calendar for the upcoming (September through May) VO Season.

On or before April 1st of each year during the term of this Agreement, the City and VO shall meet and finalize the Usage Day Calendar for the upcoming season.

The City and VO may amend the Usage Day Calendar as agreed in writing by the parties. All days, other than Usage Days, shall be Non-Usage Days.

VO will book or produce high quality operatic and/or musical theater events during its season and will utilize every possible effort at its disposal to increase the subscription sales base, individual ticket sales and the sponsorship base to help ensure the long-term success of the VO.

4.2 Box Office

A. Staffing

All box office staffing, equipment, supplies and other ticket related materials for all VO events at the HOH will be provided solely by the VO at VO's expense. In addition, VO shall supply and pay for any and all ticketing or box office staffing utilized at other City venues or elsewhere during the course of this Agreement for performances that may not take place at HOH. Examples of staffing includes, but is not limited to, box office manager, ticket sellers, will-call personnel, and cashiers.

B. Subscription Sales / Season Ticketing / Individual Ticketing

All subscription sales, season ticketing and individual ticketing are the responsibility of VO unless otherwise agreed in writing by the parties.

The City and VO each agree to share their respective subscribers list with the other under the following conditions: a) each party agrees that these lists may be accessed and used only when permission is granted in writing by the other party; b) each party agrees not to sell or otherwise distribute the list but may at its discretion use the list for the promotion and sale of other events taking place within facilities contained within the Cultural Facilities, Arts and Entertainment Department; and c) the subscriber lists may be requested in writing on a per event

approval basis by either party. The parties agree that the lists will not be unreasonably withheld. These lists will not be distributed to other agencies.

Upon termination or expiration of this Agreement [and any subsequent applicable renewal period(s)], or upon the dissolution or relocation of VO to a location not less than within a fifty (50) mile radius of Norfolk, the parties hereby agree that VO shall provide its subscriber list to the City for use in promoting events. .

The parties agree that VO may utilize any method or company for ticket sales and distribution of tickets for VO events including the City's Ticketmaster or any other ticketing systems used by the City. VO shall make 100 tickets for VO events available for sale on the City's Ticketmaster system or any other ticketing system used by the City.

The City will maintain a box office location at HOH for its exclusive use for CGEs. Any Ticketmaster or other ticketing equipment located in this box office area will be for the exclusive use of the City during the term of this Agreement, unless otherwise agreed by the parties.

C. Complimentary Tickets

VO shall make available to the City a minimum of twenty (20) complimentary tickets for each VO performance, if requested by the Director, to be used at the City's sole discretion.

D. Admission and Other Taxes

VO is responsible for the payment of all admission and other City, State or Federal taxes associated with the ticketing of VO events held in HOH or other City venues. Should the VO utilize the City's ticketing system, the City may, at its discretion, retain and remit City taxes associated with VO events held in City venues.

4.3 Limited Retail Sales

Retail merchandise may be sold by VO in City venues during performances of VO events only. Such merchandise includes shirts, cups, programs and CDs that are reflective of the Virginia Opera or the artist(s) performing in the City venue at that time. VO shall be responsible for all expenses associated with such retail sales including, but not limited to, staffing, bootleg security (if requested), inventory, tables, racks, stands, credit card processing, cash drawers and signage. VO shall retain all proceeds from, and pay all taxes associated with, such retail sales.

For CGEs or other events leased by the City, the City, at its sole discretion, may use any retail sales staff or methodology it deems necessary to sell merchandise, including but not limited to, records, CD's, t-shirts, jackets and other show related merchandise. This may include using VO staff for such sales with prior notice.

4.4 Food and Beverage/Catering/Concessions

VO agrees to comply with all applicable food and beverage laws in the State of Virginia and the City of Norfolk.

VO shall have the exclusive rights to all food and beverage concessions sold at VO's events in the HOH only. Concessions include, but are not limited to, alcoholic and non-alcoholic beverage sales, confections and other food as deemed appropriate by VO. VO and all patrons attending events of VO may not at any time be allowed to bring outside food and beverage of any type into HOH.

VO may, if requested by the City, provide concessions services for CGEs and will be subject to current City commissions. If, for any reason, VO determines it is not in its best interests to make concession service available for a CGE, the City shall then have the right to provide concession services with no commissions due VO for such sales.

On Non-Usage days, VO shall not interfere with food and beverage sales by the City or other users and shall not be obligated to furnish personnel for such sales or be responsible for conducting such sales. City may, at its sole discretion, hire outside caterers to supply food and beverage sales for any CGE.

4.5 Event Staffing

VO is responsible for providing and paying for all event-related staffing at VO events. The numbers of such staff shall be determined by VO but will be within the standard practices of safe staffing levels as set by the IAVM safety standards. Staffing shall include, but not be limited to, Ushers, Ticket Takers, Door Guards, Stage Guards, Police, Stage Labor, and Paramedics.

For CGEs, all staffing levels shall be determined by the Director or designated CFAE staff. The City may use VO staff to assist with CGEs or, at the sole discretion of the Director, staff the CGEs with non-VO staff.

The City may use VO staff, when possible for CGEs, providing VO staff are competitively priced and qualified to work the specific CGE in HOH at that time. Such usage shall be determined solely by the Director or his designee. Payments by the City to VO for such staff services shall be credited against the Debt which is the subject of the attached Agreement for Repayment of Past Due Debt and Promissory Note until the Debt is paid in full and then the payments by the City to

VO for such staff services shall be credited against the rent due to the City from VO pursuant to this Lease Agreement.

4.6 Event Information

Should the City choose to use VO staff for CGEs, VO will provide the City with detailed estimates of staffing, equipment, and other logistical needs and costs for each performance, at least 14 days in advance of the event.

4.7 Parking

All parking arrangements for Lessee staff and patrons at the HOH shall be negotiated with the City's Division of Parking and is subject to the City's Division of Parking fees, rules and regulations.

Article V – Financial Considerations

5.1 Rent

The parties agree that VO shall pay rent to the City according to the following schedule as calculated from the base FY 2017 (July 1 thru June 30) rental amount of \$105,702.00, to be increased by three percent (3%) each year of this Agreement.

Virginia Opera Association Rent Schedule

Year (7/1 – 6/30)	Base Rent
2016	\$105,702
2017	\$108,873
2018	\$112,139
2019	\$115,503
2020	\$118,968

Rent shall be paid to the City by VO on or before the last day of each month for that month during the term of this Agreement in the amount of one twelfth (1/12) of the annual rent due. Payment shall be sent to the Department of Cultural Facilities, Arts and Entertainment in a check or wire transfer, payable to SCOPE PROMOTIONS.

Late charges shall accrue at the rate of 1.5% per month for any payments beyond 30 days outstanding. Failure to pay Rent as required under this Section shall constitute breach of this Agreement pursuant to Section 7.9 of this Agreement.

5.2 Reimbursable Expenses

VO is responsible for paying all expenses associated with VO performances and rehearsals in non-HOH City venues including, but not limited to, such items as staffing costs, catering, parking, equipment rental, damages, ticketing, cleaning and any additional requested items.

VO will provide the City with a current rate sheet on July 1 of each year of this Agreement that outlines the charges for all labor, equipment rental, cleaning and other VO services that may be used by the City for CGEs.

The City will provide the VO, upon request with its rate sheet each year of this Agreement outlining similar costs for other City venues.

5.3 Concessions Commissions Payments

VO will be required to remit to the City on or before June 30 of each year during this Agreement 10% of adjusted gross concessions sales, defined as total gross receipts less applicable city and state taxes, for sales generated at VO events at the HOH each year along with actual documentation verifying the total sales for that year.

This documentation will be required with each payment remitted to the City.

5.4 Retail Sales Commission Payments

The City hereby waives its rights to commissions normally charged on retail sales in City operated venues for all VO events at HOH. VO will be responsible for remittance of all applicable sales tax.

5.5 Inclusion of City / City Recognition

A. Advertising

VO will include the SevenVenues logo in all VO advertising, including print and television advertisements, websites, and all printed collateral materials relating to events taking place within City facilities, in a size no smaller than other top tier VO sponsors. Use of the supplied SevenVenues, or any subsequent logos with the venue name included is required in all VO materials. This inclusion of City logos shall be done at no cost to the City.

B. Website Links

VO agrees to provide a link on its website to both the SevenVenues and Ticketmaster website at no cost to either party during the term of this Agreement. Instructions for artwork and internet use to be exclusively provided by the SevenVenues marketing representative.

C. Program Ad

VO agrees that all programs produced and used by VO for VO performances will each contain a one page ad featuring SevenVenues at no cost to the City. Artwork and ad content to be exclusively provided by the SevenVenues marketing staff.

D. Sponsorship Recognition

VO agrees to list the City of Norfolk as a sponsor in all materials, announcements, advertisements and any other types of VO sponsor recognition at no cost to the City.

5.6 Business Plans-VO Board

VO acknowledges the need for the City to be involved with the advertising and business planning processes that VO undertakes during its operating year. In recognition of this need and in order to keep the City informed of business and advertising strategies, that VO hereby agrees that the City's Director or his designee is appointed as an ex-officio member of the VO Board of Directors for the term of this Agreement.

VO shall provide its Business Plan to the Director on or before June 30th of each year during the term of this Agreement.

A. Financial Statements

VO will provide audited financial statements to the City each calendar year of this Agreement (July 1 – June 30). The audited financial statements will be provided to the Director on or before each December 1st date during the term of this Agreement.

B. Inspection and Copying of Records

The parties agree that the City shall have the right to inspect and copy VO's business and financial records as deemed necessary by the Director.

5.7 Payments Due

VO shall remit all non-rent payments to the City within 30 days of invoice receipt. Any overdue amount will accrue a 1.5% fee assessed monthly after an initial 30 day period.

5.8 Credit for Utilities

The goal of this program is to provide incentive for VO to work in conjunction with the City to maintain efficient use of all utilities supplied to the HOH and currently paid for by the City. In an effort to further that cooperation, the City is willing to credit VO with rental rebates for verifiable reductions on a monthly basis. Payments by the City to VO for such energy and water use savings ("utility credits") shall be credited against the Debt which is the subject of the attached Agreement for Repayment of Past Due Debt and Promissory Note until the Debt is paid in full and then the payments by the City to VO for such utility credits shall be credited against the rent due to the City from VO pursuant to this Lease Agreement. The outline for the calculation of savings is listed below:

TENANT UTILITY CALCULATIONS

Tenant's utility credits will be calculated by using the following guidelines. Credits will be calculated on a monthly basis and will be applied to all three utility services (electricity, gas, and water). Each utility will be calculated separately and then combined to generate a total credit calculation.

Please also refer to the attached Spreadsheet.

1) AMUC. Average Monthly Utility Consumption:

The Average Monthly Utility Consumption is calculated monthly and averaged out over the past 5 years of data for that month.

Note this calculation is recorded as a unit of measurement i.e. Kwh.

2) Rate:

The Rate calculation is taken from June 30th of the prior year. In order to calculate a credit for each utility, the rate will be calculated from the June bill of the previous financial year. This amount will be used for the entire year.

3) Baseline:

The Baseline is the dollar amount of a utility savings required to receive a credit.

$$\text{AMUC} \times \text{Rate} = \text{Baseline}$$

4) Actual:

Actual utility usage for the current month reported in dollars.

5) Credit Calculation:

Credit is the difference between the baseline and the actual utility cost. If the actual utility cost exceeds the baseline utility cost, the credit will default to zero.

Article VI – Maintenance and Equipment

6.1 Inventory

The parties agree that each party has written an inventory list of all equipment which it owns or claims to own, which Inventory Lists are attached hereto. The parties agree that the lists shall be reviewed and updated on or before June 30th of each year during this Agreement and more often if equipment is added or deleted from the inventory lists.

6.2 Improvements

VO will not make any alterations, improvements or otherwise renovate or cause to be renovated any areas inside or outside of City venues without the prior written approval of the Director.

6.3 Care of Facilities

VO agrees to use all City venues properly and assist the City with the proper maintenance and use of City venues and equipment during VO Usage Days.

6.4 Equipment Maintenance

VO will provide general maintenance for the equipment in the HOH as follows:

A. Lessee's Equipment

VO will be responsible for the maintenance, replacement, security and any costs associated with the use of VO's equipment. No equipment may be installed by VO in any City venue without the prior written approval of the Director or his designee. All equipment installed by VO will be of a temporary nature and will be maintained by VO and VO is to reimburse the City for any work done by the City to VO's equipment at VO's request.

B. Permanent City Equipment

The City shall provide maintenance for permanent City equipment at the HOH. This includes HVAC systems, plumbing and other building infrastructure. The repair of any damage to Permanent City equipment due to negligence by VO's staff shall be billed to VO. This does not include the rigging/fly loft system. The City will conduct inspections of the rigging/fly loft system every two (2) years. Any maintenance/damage repairs outside of normal wear and tear will be billed to VO.

6.5 Janitorial Services

VO shall provide janitorial services in all areas of the HOH at VO's sole expense. These services shall include, but not be limited to, general cleaning, mopping, vacuuming, carpet shampooing, restroom maintenance, window cleaning, kitchen cleaning, dusting and all cleaning practices generally associated with public assembly facilities. All supplies needed for such janitorial services, including but not limited to, mops, brooms, vacuums, paper products, cleaning solutions, rags and other materials will be supplied by VO at the sole expense of VO. VO shall maintain the HOH in a spotless and pristine manner ensuring proper care of all spaces and equipment. For CGEs, VO shall provide the Director with a written estimate of cleaning fees not less than fourteen (14) days prior to the CGE and the City and VO shall negotiate and agree on the cleaning fees to be paid by the City.

6.6 Utilities

The City, at its expense, shall supply basic utilities to the HOH including water, electricity and natural gas. The City will not supply other utilities such as cable television, satellite television, internet access, telephone or any equipment associated with such utilities. The City may make requests to be permitted access to use such utilities for CGEs and VO will make every effort to provide requested utilities at a mutually agreeable rate. City equipment for City supplied utilities will be operated in a mutually agreeable manner where both parties agree that the conservation of utility use is important and will be a high priority to both the City and VO. The City and VO recognize that City equipment may need maintenance and will break down from time to time. The City shall use its best efforts to maintain

and repair such equipment in a timely manner, however, the City will not be responsible for mechanical problems in City Equipment that affect events or may temporarily cause the discomfort of users of the HOH.

6.7 Storage

VO will be permitted to use certain areas of HOH for storage of VO equipment and merchandise. The size and location of such space will be at the sole discretion of the Director and will be specified in the Operating Agreement.

6.8 General Maintenance

VO shall be responsible, at its sole expense, for general maintenance in the HOH during the course of this Agreement. General Maintenance shall include, but not be limited to, basic plumbing, touch up painting, wall repairs, replacement of light bulbs and small electrical repairs, door and lock repairs, broken windows, seat repairs, maintenance of all stage electrical, lighting, rigging and other stage systems, flooring, walkways and other standard basic maintenance needs at the HOH. This does not include building damage due to roof leaks, vandalism, or other non-VO generated activity or occurrences.

6.9 Capital Maintenance

The City shall be responsible for major capital maintenance to the HOH. Major Capital items shall include such systems as HVAC, Roofing, Standard Utilities Capital work (Water, Gas and Electricity), structural matters, major repairs involving carpeting or painting, elevators and other large system maintenance. Such repairs will be done on a long term major maintenance schedule that will be reviewed by VO and City on an annual basis. Repairs of Major Maintenance Systems will be completed as funds are made available by the City.

Article VII – Other Contractual Terms

7.1 Liability/Indemnification

VO will not hold the City liable for any damage to VO's property except as caused by the negligence of the City or other users of the premises. VO agrees to assume all risks of every kind, whether relating to property or person in connection with its occupancy of the premises, whether the same arise from defects latent or patent in connection with the building, or other parts of the premises and whether or not the same were known by the City at the time or making this Lease and were not disclosed by the City at that time, or at any subsequent time, provided that VO is not responsible for damage done by persons on premises when the same are leased by the City.

VO hereby agrees and binds itself and its successors to defend, indemnify and save harmless the City of Norfolk and the officers, employees and agents of the City from and against all claims, damages, losses and expenses and all costs or damages to which the City may be put, on account of or by reason of, any injury or alleged injury to or death of any person or damage to or destruction of any property, resulting from intentional acts, negligence or carelessness in regard to the matters which are the subject of this Agreement or by or on the account of any act, or omission of VO, its officers, employees or agents. VO further agrees to defend, indemnify and save harmless the City, and its officers, employees or agents against any and all claims, suits or demands that may accrue to or be suffered by, or adjudicated against them by reason of any injury sustained by or death of VO or any employee of VO or of a subcontractor in and about the said work, under and pursuant to the provisions of the Worker's Compensation Law or any amendments thereto.

The City shall not be liable or responsible for any loss or damage to any real and personal property of VO, including loss of income and extra expense associated with any incident, arising out of any incident which is the proximate cause of any peril included within the "Special Causes of Loss" form of the standard Commercial Property Policy as used within the Commonwealth of Virginia, and including additional perils of flood, the dishonesty, movement, the back-up of sewers or drains, collapse of any building or structure, weather conditions, acts of God or any other causes of loss arising out of Nature.

7.2 Damage to Premises

If, during the term of this Agreement the premises or any part thereof shall be damaged, the City shall not be obligated to repair or rebuild the same. If the premises become unusable due to such damages, this Agreement shall immediately terminate.

7.3 Insurance

VO agrees to secure and maintain throughout the term of this Agreement and any renewal periods Comprehensive Commercial General Liability and Contractor's Public Liability insurance for bodily injury, death and property damage with coverage in the amount of Three Million Dollars (\$3,000,000) per occurrence and in the aggregate with a company authorized to do business in Virginia and further agrees that such insurance shall name the City of Norfolk, its officers, employees and agents as additional named insured parties on the required policies. VO shall provide a certificate evidencing the required coverage to the City upon execution of this Agreement and upon renewal(s), if any. Should the City decide to increase its insurance coverage requirements in any of the facilities used by VO during the course of this agreement, VO will comply with such requirements.

7.4 Force Majeure

If during the term, the premises or any part thereof shall be substantially damaged by fire, storm, other casualty or other force majeure, the City shall not be obligated to repair or rebuild the same, and if the premises becomes untenable, due to fire, storm, other casualty or force majeure, this Lease shall immediately terminate, provided that there shall be no cessation of rent if the damages shall have been the result of the negligence, default, or willful act of VO or his agents or employees. Any insurance or other benefits available under City's insurance policies shall be the sole property of City. In the event VO is deprived of use of the premises as a result of such damage, the rent shall be prorated.

7.5 Compliance with All Laws

VO hereby assures and certifies that it will comply with all local, state and federal laws, ordinances, rules, codes and regulations insofar as they are applicable to the matters which are the subject of this Agreement.

7.6 Compliance with Federal Immigration Law

At all times during which this Agreement is in effect, VO shall not knowingly employ any unauthorized alien. For purposes of this section, an "unauthorized alien" shall mean any alien who is neither lawfully admitted for permanent residence in the United States nor authorized to be employed by either Title 8, Section 1324(a) of the United States Code or the U.S. Attorney General.

7.7 Non-Discrimination

VO agrees to comply and to require all subcontractors and materialmen paid in whole or in part from funds made available under the Agreement to comply as follows:

A. No Discrimination

No person in the United States shall, on the grounds of race, color, national origin, sex or handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any activity funded by this Agreement in accordance with prevailing Federal Law.

B. ADA

Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to activities under this Agreement.

C. Civil Rights Act

Any prohibition against discrimination on the basis of religion, or any exemption from such prohibition, as provided in the Civil Rights Act of 1964 or Title VIII of the Act of April 11, 1968, hereafter referred to as the Civil Rights Act of 1968, shall also apply to activities under this Agreement.

7.8 Independent Contractor

The parties hereto agree that VO and its subcontractor(s), if any, are independent contractors and shall not be considered to be employees of the City for any purposes whatsoever.

7.9 Breach or Default/Termination

In the event of breach or default by either party of the terms and conditions of this Agreement, written notice shall be provided to the party in breach or default, which party shall then have the opportunity to cure the breach or default. If such breach or default is not cured within twenty (20) days of the notice (and such cure period is not extended by the parties), this Agreement may be terminated by an additional ten (10) day written notice of termination. Upon such termination, VO shall vacate the premises within sixty (60) days of the termination date.

7.10 Audit

The City reserves the right to audit VO's operations in HOH with proper notification which shall include VO allowing the City to inspect and or copy VO financial and business records and materials relevant to the products and services which are the subject of this agreement. This may include, but not be limited to, box office, concessions, catering, VO services to the City, stagehands, equipment inventory, safety related issues, alcohol sales and other issues as may be deemed important to the City's interests.

7.11 Non-Waiver of City's Rights

Any failure by City to insist upon strict observance on the part of VO of any covenant contained herein, whether or not City shall of knowledge of the breach thereof, shall not be deemed a waiver of City's right at any time during the term hereof to insist upon such strict observance during the remainder of the term.

CITY OF NORFOLK

By: _____

City Manager

Attest:

City Clerk

THE VIRGINIA OPERA
ASSOCIATION, INC.

By: _____

Contents Approved:

Cultural Facilities, Arts and Entertainment

Form & Correctness Approved:

Mary L.G. Nexsen, Deputy City Attorney